

Assembly Bill No. 480

Passed the Assembly August 27, 2012

Chief Clerk of the Assembly

Passed the Senate August 23, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend, repeal, and add Section 1760 of the Insurance Code, and to amend, repeal, and add Section 43601 of, and to add Section 43601.2 to, the Public Resources Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 480, Solorio. Insurance: solid waste facilities.

Existing law regulates solid waste facilities and requires that any person owning or operating a solid waste landfill submit evidence of financial ability to provide for the cost of closure and postclosure maintenance, except as specified. Existing law provides that if the evidence of financial ability for closure, postclosure, or corrective action is demonstrated by use of insurance, either through an independent insurer or where the insurance carrier is established by a solid waste facility operator to meet the financial assurance obligations of that operator, the insurance mechanism may be approved by the Department of Resources Recycling and Recovery if the insurance carrier meets specified requirements.

This bill would specify that, until January 1, 2018, an insurance carrier established by a solid waste facility operator to meet the financial assurance obligations of that operator that meets all of those specified requirements shall be eligible to provide that insurance and shall not be required to be a California admitted insurer nor be required to provide the insurance through a surplus line broker. The bill would add as a requirement for approval of a solid waste facility operator meeting its financial assurance obligations by establishing an insurance carrier that the insurance mechanism not provide in excess of 50% of the financial assurance obligation that the solid waste facility operator is required to meet in the state.

This bill would also require the Department of Resources Recycling and Recovery to submit to the Legislature, on or before January 1, 2017, a report on the use of the mechanisms demonstrating financial ability to provide for the cost of closure and postclosure maintenance, including, among other things, any financial liability the state may assume if the mechanisms permitted

under this bill and existing law fail. The bill would authorize the department to receive private funds for the purposes of conducting the study necessary for completion of the report, and would prohibit use of evidence of insurance with a carrier established by the owner or operator for the purpose of meeting the financial assurance obligations, unless sufficient private funds are received to conduct the study. The bill would require the department to make public by March 1, 2013, the costs estimate for conducting the study, and would authorize the department to consult with the Department of Insurance in completing the report. The bill would establish criteria applicable to contracts, if any, entered into by the department to conduct the study.

The people of the State of California do enact as follows:

SECTION 1. Section 1760 of the Insurance Code is amended to read:

1760. (a) (1) A home state insured, as defined in subdivision (f) of Section 1760.1, may negotiate and effect insurance to protect himself, herself, or itself against loss, damage, or liability with any nonadmitted insurer.

(2) An issuer of an insurance policy that meets all of the requirements of paragraph (2) of subdivision (e) of Section 43601 of the Public Resources Code shall be eligible to provide the insurance described in that subdivision. An issuer of an insurance policy pursuant to this section shall not be required to be a California admitted insurer, nor be required to provide the insurance through a surplus line broker.

(b) Every home state insured that effects insurance governed by this chapter shall pay the tax imposed by Part 7.5 (commencing with Section 13201) of Division 2 of the Revenue and Taxation Code.

(c) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 2. Section 1760 is added to the Insurance Code, to read:

1760. (a) A home state insured, as defined in subdivision (f) of Section 1760.1, may negotiate and effect insurance to protect himself, herself, or itself against loss, damage, or liability with any nonadmitted insurer.

(b) Every home state insured that effects insurance governed by this chapter shall pay the tax imposed by Part 7.5 (commencing with Section 13201) of Division 2 of the Revenue and Taxation Code.

(c) This section shall become operative on January 1, 2018.

SEC. 3. Section 43601 of the Public Resources Code is amended to read:

43601. (a) The evidence of financial ability shall be sufficient to meet the closure and postclosure maintenance costs when needed.

(b) The owner or operator of a solid waste landfill shall provide evidence of financial ability through the use of any of the mechanisms set forth in Part 258 (commencing with Section 258.1) of Title 40 of the Code of Federal Regulations or through the use of any other mechanisms approved by the department. However, the department may adopt regulations that reasonably condition the use of one or more of those mechanisms to ensure adequate protection of public health and safety and the environment, but shall not exclude the use of any mechanism permitted under federal law. In addition, the evidence of financial ability submitted pursuant to Section 43600 shall provide that funds shall be available to the regional water boards upon the issuance of any order under Chapter 5 (commencing with Section 13300) of Division 7 of the Water Code to implement closure and postclosure activities.

(c) The state water board or the appropriate regional water board shall have access to the financial assurance funds for closure and postclosure activities, and to financial assurance funds for corrective action, as necessary, to address water quality problems, if the owner or operator of the solid waste landfill has failed to implement the required closure and postclosure activities or corrective action activities.

(d) The owner or operator may request disbursement for expenditures to conduct closure, postclosure maintenance, or corrective actions from the financial assurance mechanism established for that activity. Requests for disbursement shall be granted by the department only if sufficient funds are remaining in the financial assurance mechanism to cover the remaining approved total costs of closure, postclosure maintenance, or corrective actions, as appropriate.

(e) If the evidence of financial ability for closure, postclosure, or corrective action is demonstrated by use of insurance, the department may approve the insurance mechanism if it is in compliance with either paragraph (1) or (2) as follows:

(1) The issuer of the insurance policy is either:

(A) Licensed by the Department of Insurance to transact the business of insurance in the State of California as an admitted carrier.

(B) Eligible to provide insurance as an excess and surplus lines insurer in California through a surplus lines broker currently licensed under the regulations of the Department of Insurance and upon the terms and conditions prescribed by the Department of Insurance.

(2) If the insurance carrier is established by a solid waste facility operator to meet the financial assurance obligations of that operator, insurance may be approved by the department that meets all of the following requirements:

(A) The insurance mechanism is in full compliance with the requirements for insurance that are specified in subdivision (d) of Section 258.74 of Title 40 of the Code of Federal Regulations.

(B) The insurance carrier is an insurer domiciled in the United States and licensed in its state of domicile to write that insurance.

(C) The insurance carrier only provides financial assurance to the operator that has established the insurance carrier as a form of self-insurance and does not engage in the business of marketing, brokering, or providing insurance coverage to other parties.

(D) The insurance carrier shall maintain a rating of A- or better by A.M. Best, or other equivalent rating by any other agency acceptable to the department.

(E) If requested by the department, an independent financial audit report evaluating the assets and liabilities of the insurance carrier and confirming compliance with the statutory and regulatory requirements of the state of domicile and an independent actuarial opinion on the independence and financial soundness of the insurance carrier by an actuary in good standing with the Casualty Actuarial Society or the American Academy of Actuaries regarding the adequacy of the loss reserves maintained by the insurance carrier shall be submitted to the department upon application and annually thereafter.

(F) The insurance mechanism does not provide in excess of 50 percent of the financial assurance obligation that the solid waste facility operator is required to meet in the state.

(f) Insurance mechanisms allowed under paragraph (2) of subdivision (e) may be used only if the department has determined that it has received sufficient private funds to conduct the study necessary to complete the report required by Section 43601.2.

(g) A solid waste facility operator using or proposing to use an insurance company to demonstrate financial assurance may be required by the department to pay a fee for the actual and necessary cost of reviewing information submitted by the operator pursuant to paragraph (2) of subdivision (e) up to an amount not to exceed ten thousand dollars (\$10,000), unless a higher amount is mutually agreed to by the operator and the department.

(h) The funds collected pursuant to subdivision (g) shall be deposited in the Integrated Waste Management Account and shall be available, upon appropriation by the Legislature, for expenditure by the department to fund the review specified in subdivision (g).

(i) This section shall remain in effect only until January 1, 2018, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.

SEC. 4. Section 43601 is added to the Public Resources Code, to read:

43601. (a) The evidence of financial ability shall be sufficient to meet the closure and postclosure maintenance costs when needed.

(b) The owner or operator of a solid waste landfill shall provide evidence of financial ability through the use of any of the mechanisms set forth in Part 258 (commencing with Section 258.1) of Title 40 of the Code of Federal Regulations or through the use of any other mechanisms approved by the department. However, the department may adopt regulations that reasonably condition the use of one or more of those mechanisms to ensure adequate protection of public health and safety and the environment, but shall not exclude the use of any mechanism permitted under federal law. In addition, the evidence of financial ability submitted pursuant to Section 43600 shall provide that funds shall be available to the regional water boards upon the issuance of any order under Chapter 5 (commencing with Section 13300) of

Division 7 of the Water Code to implement closure and postclosure activities.

(c) The state water board or the appropriate regional water board shall have access to the financial assurance funds for closure and postclosure activities, and to financial assurance funds for corrective action, as necessary, to address water quality problems, if the owner or operator of the solid waste landfill has failed to implement the required closure and postclosure activities or corrective action activities.

(d) The owner or operator may request disbursement for expenditures to conduct closure, postclosure maintenance, or corrective actions from the financial assurance mechanism established for that activity. Requests for disbursement shall be granted by the department only if sufficient funds are remaining in the financial assurance mechanism to cover the remaining approved total costs of closure, postclosure maintenance, or corrective actions, as appropriate.

(e) If the evidence of financial ability for closure, postclosure, or corrective action is demonstrated by use of insurance, the department may approve the insurance mechanism if it is in compliance with either paragraph (1) or (2) as follows:

(1) The issuer of the insurance policy is either:

(A) Licensed by the Department of Insurance to transact the business of insurance in the State of California as an admitted carrier.

(B) Eligible to provide insurance as an excess and surplus lines insurer in California through a surplus lines broker currently licensed under the regulations of the Department of Insurance and upon the terms and conditions prescribed by the Department of Insurance.

(2) If the insurance carrier is established by a solid waste facility operator to meet the financial assurance obligations of that operator, insurance may be approved by the department that meets all of the following requirements:

(A) The insurance mechanism is in full compliance with the requirements for insurance that are specified in subdivision (d) of Section 258.74 of Title 40 of the Code of Federal Regulations.

(B) The insurance carrier is an insurer domiciled in the United States and licensed in its state of domicile to write that insurance.

(C) The insurance carrier only provides financial assurance to the operator that has established the insurance carrier as a form of self-insurance and does not engage in the business of marketing, brokering, or providing insurance coverage to other parties.

(D) The insurance carrier shall maintain a rating of A- or better by A.M. Best, or other equivalent rating by any other agency acceptable to the department.

(E) If requested by the department, an independent financial audit report evaluating the assets and liabilities of the insurance carrier and confirming compliance with the statutory and regulatory requirements of the state of domicile and an independent actuarial opinion on the independence and financial soundness of the insurance carrier by an actuary in good standing with the Casualty Actuarial Society or the American Academy of Actuaries regarding the adequacy of the loss reserves maintained by the insurance carrier shall be submitted to the department upon application and annually thereafter.

(f) A solid waste facility operator using or proposing to use an insurance company to demonstrate financial assurance may be required by the department to pay a fee for the actual and necessary cost of reviewing information submitted by the operator pursuant to paragraph (2) of subdivision (e) up to an amount not to exceed ten thousand dollars (\$10,000), unless a higher amount is mutually agreed to by the operator and the department.

(g) The funds collected pursuant to subdivision (f) shall be deposited in the Integrated Waste Management Account and shall be available, upon appropriation by the Legislature, for expenditure by the department to fund the review specified in subdivision (f).

(h) This section shall become operative on January 1, 2018.

SEC. 5. Section 43601.2 is added to the Public Resources Code, to read:

43601.2. (a) On or before January 1, 2017, the Department of Resources Recycling and Recovery shall submit to the Legislature a report on the use of the mechanisms pursuant to paragraph (2) of subdivision (e) of Section 43601 for demonstrating financial ability to provide for the cost of closure and postclosure maintenance. The report shall, at a minimum, address all of the following:

(1) A summary of any ratings reports, audit finding, or other information regarding an owner or operator using financial

mechanisms pursuant to paragraph (2) of subdivision (e) of Section 43601 to provide financial assurance.

(2) Whether financial mechanisms pursuant to paragraph (2) of subdivision (e) of Section 43601 provide adequate financial assurance to provide for the costs of solid waste landfill closure and postclosure maintenance.

(3) The level of assurance provided by financial mechanisms pursuant to paragraph (2) of subdivision (e) of Section 43601 relative to other mechanisms permitted pursuant to Section 43601.

(4) Any financial liability the state may assume if the mechanisms permitted pursuant to Section 43601 fail.

(5) Any recommendations for ensuring solid waste landfill closure and postclosure maintenance costs are properly assured to protect the state from long-term postclosure and corrective action costs in the event that a landfill owner or operator fails to meet its legal obligations.

(b) (1) The department may consult with the Department of Insurance for the purposes of completing the report required by subdivision (a).

(2) By March 1, 2013, the department shall make public an estimate of the costs of the study necessary to complete the report required by subdivision (a). The costs of the study are not subject to the limitations set forth in subdivision (g) of Section 43601.

(3) This subdivision does not preclude the department from recovering costs in excess of this estimate from an owner or operator of a solid waste landfill that is utilizing insurance under paragraph (2) of subdivision (e) of Section 43601.

(4) An owner or operator of a solid waste landfill shall not use insurance under paragraph (2) of subdivision (e) of Section 43601 as evidence of sufficient financial ability as required by subdivision (a) of Section 43601, unless the department has received private funds equal to the department's estimated costs.

(c) If the department enters into a contract with an entity to conduct the study necessary to complete the report required by subdivision (a), no person or entity that has provided funds for the study shall have input as to the terms of the contract or the awarded contractor. In awarding the contract, the department shall consider and disclose any past or current relationship that the contractor has had with an owner or operator of a solid waste landfill that

may use the insurance mechanism allowed under paragraph (2) of subdivision (e) of Section 43601.

Approved _____, 2012

Governor